REMARKS

This responds to the Office Action mailed on September 29, 2005, and the references cited therewith.

Claims 1, 8, 19-21, 25 and 28 are amended, claims 12-18 are canceled without prejudice or disclaimer, and no claims are added; as a result, claims 1, 3-11, 19-30 remain pending in this application.

§101 Rejection of the Claims

Claims 8, 12, 15, 18, 21 and 28 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter (i.e. a computer-accessible medium, a computer data signal embodied in a carrier wave and a computerized method). The Office Action provides no guidance as to why the claims are considered non-statutory. For the purposes of this response, Applicant will assume that the Examiner is applying the Patent Subject Matter Eligibility Interim Guidelines (hereinafter "Guidelines") in the rejection of claims 8, 12, 15, 18, 21 and 28. According to the Guidelines, the USPTO considers claims to signals per se, whether functional descriptive material or nonfunctional descriptive material, to be nonstatutory subject matter. Applicant agrees with the counterargument presented in Annex IV, which states:

> "On the other hand, from a technological standpoint, a signal encoded with functional description material is similar to a computer-readable medium encoded with functional descriptive material, in that they both create a functional relationship with a computer. In other words, the computer is able to execute the encoded functions, regardless of whether the format is a disk or a signal." (see Guidelines at page 57)

However, in order to expedite prosecution, Applicant has amended claim 8 and has canceled signal claims 12-14 and claims 15-18. Claim 8 has been amended to clarify that the computer-readable medium is a tangible medium, thereby excluding signals. Applicant reserves the right to reintroduce the claims directed to and including signals in a continuing application.

Applicant respectfully submits that 35 U.S.C. 101 was inappropriately applied to reject claims 21 and 28. Claim 21 is directed to a computerized method. Computerized methods are clearly processes under 35 U.S.C. 101 and are therefore statutory.

Claim 28 is a directed to a computerized system. A computerized system is clearly a machine under 35 U.S.C. 101 and therefore claim 28 is clearly statutory.

§103 Rejection of the Claims

Claims 1, 3-16, 18-20 and 25-29 were rejected under 35 USC § 103(a) as being unpatentable over Emens et al. (U.S. 6,606,643) in view of Ramanathan et al. (U.S. 5,913,041). In order for the Examiner to establish a *prima facie* case of obviousness, three base criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *M.P.E.P.* § 2142 (citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir. 1991)). Applicant respectfully submits that the claims, as amended, contain elements not found in the cited references.

For example, base claims 1, 8, 21, 25 and 28 have been clarified to include selectively determining an empirical measurement of a performance of each of the plurality of sources according to a size of data to be obtained from at least one of the plurality of sources. Support for the clarifying amendments may be found throughout the specification and in particular on page 11, line 10 to page 12, line 17. No new matter is believed introduced. Applicant has reviewed Emens and Ramanathan and can find no teaching or suggestion of selectively determining a performance measurement to use based on a size of data to be transferred. As a result, the combination of Emens and Ramanathan fails to teach or suggest each and every

element of claims 1, 8, 25 and 28. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claims 1, 8, 25 and 28.

Claims 17, 21-24 and 30 were also rejected under 35 USC § 103(a) as being unpatentable over Emens et al. and Ramanathan et al. in view of Andrews (U.S. 2002/0038360). Claim 17 has been canceled in this response.

Base claim 21 has been amended to include selectively obtaining an empirical measurement of performance of each of a plurality of sources. As discussed above, neither Emens nor Ramanathan teach or suggest selectively obtaining a measure of performance. Further, Applicant has reviewed Andrews and can find no teaching or suggestion of the recited language. As a result, the combination of Emens, Ramanathan, and Andrews fails to teach or suggest each and every element of Applicant's claim 21. Applicant respectfully requests reconsideration and the withdrawal of the rejection.

In addition to the patentable elements provided by the dependent claims, the dependent claims are believed allowable by virtue of their dependency on an allowable base claim. Accordingly, the rejections of the dependent claims based on the combination of Emens and Ramanathan and the combination of Emens, Ramanathan and Andrews is believed overcome. The Applicants respectfully request removal of the rejections.

CONCLUSION

Applicant respectfully submits that the pending claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6954 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

JIM CHU ET AL.

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
Attorneys for Intel Corporation
P.O. Box 2938
Minneapolis, MN 55402
(612) 373-6954

Date March 29, 2006 By _____
Rodney L. Lacy
Reg. No. 41,136

I hereby certify that this paper is being transmitted by facsimile to the U.S. Patent and Trademark Office on the date shown below.

_____ March 29, 2006
Rodney L. Lacy Date of Transmission